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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/684,943
Filing Date: October 14, 2003
Appellant(s): NOMULA, SRINIVAS

Nicholas F. Gallo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 29, 2007 appealing from the Office action mailed May 30, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,069,355	MATUSZAK	12-1991
5,180,599	FELDMEIER et al.	01-1993
5,752,614	NELSON et al.	05-1998
6,302,321	REESE et al.	10-2001
6,132,861	KANG et al.	10-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7,8-17,20-27,30,40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matuszak (US 5,069,355) in view of Feldmeier et al. (US 5,180,599).

Matuszak discloses a base portion having a bottom and side defining an interior space and an opening thereto and a plastic membrane of sufficient size to cover the opening and having an outer peripheral area attached to the base portion. Matuszak discloses the adhesive bond has a predetermined tensile force strength that allows easy opening of the container by peeling the membrane from the base portion. See column 4, lines 27-32 regarding the plastic material of the container and column 5, lines 38-43 regarding the peel strength of the seal.

Matuszak discloses the lid is bonded to the container opening by adhesive, but is silent regarding the adhesive bond being a radiation weakened bond.

Feldmeier teaches it is known to provide a container and lid, the lid being bonded to the container opening by various methods including a radiation weakened adhesive bond (in the abstract and column 2, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of radiation weakened adhesive bonding to the container of Matuszak. Doing so is an obvious matter of design choice of known equivalent adhesive bonding methods.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bond with a predetermined shear force of at least 20psi and the predetermined tensile force strength of less than about 14 pounds, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Doing so allows for retort of the container contents without bond breakage or rupture, while allowing for easy removal at the desired time of removal.

Regarding the attachment of the closure to the container, Nelson teaches the closure is double seamed to the container opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fusion bond the closure to the container since the examiner takes Official Notice of the equivalence of double seaming and fusion bonding for their use in the container art and the selection of any of these known equivalents to secure a closure to a container would be within the level of ordinary skill in the art. In the instant case, fusion bonding would eliminate the outer bead formed at the upper end of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 9,20, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1,11, and 21 above, and further in view of Reese et al. (US 6,302,321).

Matuszak as modified discloses the claimed closure except for the adhesive being a polyurethane adhesive.

Reese teaches that hot melt adhesive and polyurethane adhesive are structurally equivalent for securing two structures together.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the polyurethane adhesive for the hot melt adhesive of Matuszak. Doing so allows for use of different material known in the art for its ability to function the same as other known adhesives.

Claims 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 5,752,614) in view of Matuszak.

Nelson discloses a closure for hermetic sealing of an open end of a retortable container, the closure comprising an end ring and a membrane adhesively attached to the end ring and covering an opening therethrough, the adhesive *configured* to be radiation weakened to have a predetermined tensile force strength and the ring is *configured* to be fusion welded to the container and the bond *adapted* to be weakened by microwave radiation. Nelson does not teach the ring and membrane are plastic.

Matuszak teaches it is known to utilize metal or plastic for the container and lid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container and lid of Nelson of plastic material and to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as evidenced by Matuszak.

It is noted the phrases “configured to be” and “adapted to be” do not positively set forth the structure set forth thereafter, but indicates the capability of the structure being possible. To that degree, the claims are met by the structure of Nelson.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 21 above, and further in view of Reese.

Nelson as modified discloses the claimed closure except for the adhesive being a polyurethane adhesive.

Reese teaches that hot melt adhesive and polyurethane adhesive are structurally equivalent for securing two structures together.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the polyurethane adhesive for the hot melt adhesive of Nelson. Doing so allows for use of different material known in the art for its ability to function the same as other known adhesives.

Claims 1-7,10, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Feldmeier and Matuszak.

Nelson discloses a closure for hermetic sealing of an open end of a retortable container, an end ring and a membrane adhesively attached to the end ring and covering an opening therethrough, the adhesive bond having a predetermined tensile force strength of less than about 14 pounds, the ring having an outer peripheral area *configured* to be fusion welded to the container. Nelson is silent regarding the adhesive being radiation weakened to have a predetermined tensile force strength of less than about 14 pounds and the container and membrane being of plastic.

Feldmeier teaches it is known to join a membrane to a container opening via radiation weakened adhesive (in the abstract and column 2, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply radiation weakened adhesive to secure the membrane of Nelson to the opening as taught by Feldmeier. Doing so allows for a complete removal of the adhesive materials upon opening of the associated container.

Matuszak teaches it is known to utilize metal or plastic for the container and lid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container and lid of Nelson of plastic material and to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as evidenced by Matuszak.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding the attachment of the closure to the container, Nelson teaches the closure is double seamed to the container opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fusion bond the closure to the container since the examiner takes Official Notice of the equivalence of double seaming and fusion bonding for their use in the container art and the selection of any of these known equivalents to secure a closure to a container would be within the level of ordinary skill in the art. In the instant case, fusion bonding would eliminate the outer bead formed at the upper end of the container.

Claims 9 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Reese.

Nelson as modified discloses the claimed closure except for the adhesive being a polyurethane adhesive.

Reese teaches that hot melt adhesive and polyurethane adhesive are structurally equivalent for securing two structures together.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the polyurethane adhesive for the hot melt adhesive of Nelson. Doing so allows for use of different material known in the art for its ability to function the same as other known adhesives.

Claims 11-17,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Feldmeier and Matuszak.

Nelson teaches a retortable container and a closure for hermetic sealing of an open end of the retortable container, an end ring and a membrane adhesively attached to the end ring and covering an opening therethrough. Nelson does not teach the adhesive is radiation weakened to have a predetermined tensile force strength, the ring and membrane are plastic, and the ring is fusion bonded to the container.

Feldmeier teaches it is known to join a membrane to a container opening via radiation weakened adhesive (in the abstract and column 2, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply radiation weakened adhesive to secure the membrane of Nelson to the opening as taught by Feldmeier. Doing so allows for a complete removal of the adhesive materials upon opening of the associated container.

Matuszak teaches it is known to utilize metal or plastic for the container and lid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container and lid of Nelson of plastic material and to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as evidenced by Matuszak.

Regarding the attachment of the closure to the container, Nelson teaches the closure is double seamed to the container opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fusion bond the closure to the container since the examiner takes Official Notice of the equivalence of double seaming and fusion bonding for their use in the container art and the selection of any of these known equivalents to secure a closure to a container would be within the level of ordinary skill in the art. In the instant case, fusion bonding would eliminate the outer bead formed at the upper end of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

(10) Response to Argument

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., a radiation weakened adhesive which is treated prior to application to a container assembly) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Wherein the (independent) claims set forth a radiation weakened bond via a corona treatment, the applied prior art meets the claim limitation.

Appellant asserts the limitation of a radiation weakened bond imparts specific structure to the claim. The structural limitation that must be considered with respect to the claimed limitation is that the bond between the two component parts is weak enough to allow for separation therebetween.

It is submitted that peelable bonds are well known in the container art. Peelable bonds are bonds that are weak enough to allow separation between two associated components. The corona charged bond of Feldheimer is a peelable bond as is known in the art. There is no structural difference between that which is claimed and that which is known in the art.

Appellant asserts no reference is made to the microwave radiation. Corona treatment and microwave radiation are known equivalent techniques for curing substrates as evidenced by Kang et al. and substituting one method for the other would have been obvious to one of ordinary skill in the art as taught therein. This is not a new grounds of rejection, but merely evidence to that which is known in the art.

Regarding appellant's remarks regarding the predetermined tensile strength of the weakened bond (see page 12), the examiner asserts that every bond has a predetermined tensile strength. One of ordinary skill in the art at the time of the invention would select a predetermined tensile strength for the weakened bond to ensure the correct balance between a secure closure and a peelable closure.

It is again reiterated that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability. Thus, one of ordinary skill in the art would select any known material for its suitability as a plastic or adhesive.

Regarding appellant's remarks directed to the lid being "configured" to be fusion welded to the container (see page 17), it is asserted that the claim does not establish that the lid is fusion welded to the container only that it is capable of being fusion welded. Thus, as long as the lid contacts the container rim the lid is capable of being fusion welded to the container. The prior art meets the limitation for this reason and the reason set forth in the rejection above.

Wherein appellant restates similar remarks to the various combinations of the prior art, the examiner asserts the same rebuttals. They are not repeated herein.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robin A. Hylton
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